




MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: March 23, 2009

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Amended
Special Item No. 1

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☒ Bid waiver requiring County Mayor's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☒ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____	Mayor _____	Amended Special Item No. 1 3-23-09
Veto _____		
Override _____		

RESOLUTION NO. R-318-09

RESOLUTION APPROVING AGREEMENTS FOR THE DEVELOPMENT AND CONSTRUCTION OF THE MARLINS' BALLPARK, RELATED PUBLIC INFRASTRUCTURE AND PARKING FACILITIES, FOR THE OPERATION OF THE COMPLETED BALLPARK AND PARKING FACILITIES, FOR THE MARLINS' GUARANTY OF THE BALLPARK DEVELOPER'S OBLIGATIONS, AND FOR THE MARLINS' ASSURANCES REGARDING NON-RELOCATION; WAIVING COMPETITIVE BIDDING FOR SELECTION OF DEVELOPER FOR CONSTRUCTION OF BALLPARK AND RELATED PUBLIC INFRASTRUCTURE, FOR SELECTION OF OPERATOR OF BALLPARK, FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE WORK RELATED TO BALLPARK, AND PURCHASE OF BUILDING MATERIALS, SUPPLIES AND EQUIPMENT; AUTHORIZING CONVEYANCE OF CERTAIN NAMING RIGHTS TO STADIUM PREMISES; DELEGATING TO THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE THE AUTHORITY TO PERFORM CERTAIN ACTS, EXPEND FUNDS UP TO \$9,300,000, AND EXERCISE CERTAIN CANCELLATION AND TERMINATION PROVISIONS, SUBJECT TO THE PARAMETERS SET FORTH IN THIS RESOLUTION AND THE STADIUM AGREEMENTS; AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE ALL SUCH AGREEMENTS UPON FULFILLMENT OF CERTAIN CONDITIONS; AND WAIVING REQUIREMENTS OF RESOLUTION NO. R-130-06 RELATED TO FINAL FORM AND EXECUTION BY NON-GOVERNMENTAL PARTIES

WHEREAS, this Board previously adopted Resolution No. R-188-08 which provided for negotiation and finalization of Stadium Agreements for the development and construction of the Marlins Ballpark, related Public Infrastructure and City Parking Facilities; and

WHEREAS, the following Stadium Agreements are being presented to this Board for approval: the Construction Administration Agreement by and among the

County, the City of Miami (the "City"), and the Marlins Stadium Developer, LLC (the "Stadium Developer"); the Operating Agreement by and among the County, the City of Miami, and the Marlins Stadium Operator, LLC (the "Stadium Operator"); the City Parking Agreement by and among the County, the City of Miami, and the Stadium Operator; the Non-Relocation Agreement by and among the County, the City of Miami, and the Florida Marlins, L.P.; and the Assurance Agreement by and among the County, the City of Miami, and the Florida Marlins, L.P. (hereafter collectively referred to as the "Stadium Agreements"), each in substantially the form attached to this resolution as Attachments "A", "B", "C", "D" and "E", respectively and incorporated herein by this reference, for the development, design, construction and operation of a Florida Marlins ballpark, associated public infrastructure and parking facilities; and

WHEREAS, this Board finds that the planning, design and construction of the Baseball Stadium Project and Public Infrastructure Work (as such terms are defined in the Construction Administration Agreement), the operation of the Stadium Premises (as such term is defined in the Operating Agreement) and the performance of the Stadium Agreements are in the best interests of the County and will serve a paramount public purpose; and

WHEREAS, the Baseball Stadium Project and Public Infrastructure Work (as such terms are defined in the Construction Administration Agreement) are collectively referred to in this resolution as the "Ballpark Project"; and

WHEREAS, the County Mayor has submitted to this Board a written recommendation that it is in the best interests of Miami-Dade County to waive formal bid procedures and the provisions of Section 5.03(D) of the Miami-Dade County Charter and the Miami-Dade County Code in connection with the Stadium Agreements:

1. for the selection of the Stadium Developer as the developer of the Baseball Stadium Project and Public Infrastructure Work;
2. to authorize the County to directly purchase building materials, supplies and equipment for the Baseball Stadium Project and Public Infrastructure Work; and
3. for the selection of the Stadium Operator as the operator of the Stadium Premises,

a copy of which is attached to this resolution as Attachment "F," and incorporated herein by this reference; and

WHEREAS, HOK Sport, Inc., the architect of record for the Ballpark Project, has provided a written recommendation that the Public Infrastructure Work be awarded to Hunt/Moss, a Joint Venture ("Hunt/Moss") or another appropriately licensed contractor, without competitive selection, a copy of which is attached to this resolution as Attachment "G"; and

WHEREAS, this Board finds that, after consideration of and consistent with the written recommendation of HOK Sport, Inc. and the Mayor's written recommendation, in accordance with Section 255.20, Florida Statutes, it is in the best interests of Miami-Dade County to waive formal bid procedures and the provisions of Section 5.03(D) of the Miami-Dade County Charter and the Miami-Dade County Code in connection with the Stadium Agreements to: (i) authorize the Stadium Developer to contract with Hunt/Moss for the construction of the Public Infrastructure Work, subject to the successful negotiation of the terms and conditions of the Construction Management Contract because Hunt/Moss has been competitively selected by the Stadium Developer as the construction manager to construct the Baseball Stadium Project and is uniquely qualified to undertake the project because the Public Infrastructure Work is affiliated with the

Baseball Stadium Project; and (ii) in the alternative, to authorize the County to contract with an appropriately licensed contractor for the construction of the Public Infrastructure Work, because the time to competitively award the project will materially increase the cost of the project; and

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum from the County Manager, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recitals are incorporated in this resolution and are approved.

Section 2. This Board finds that it is in the best interest of Miami-Dade County to waive formal bid procedures in accordance with the provisions of Section 5.03(D) of the Home Rule Charter, Section 2-8.1 of the Code of Miami-Dade County, and the requirements of Administrative Order 3-38 in connection with the selection of the Stadium Developer as the developer of the Baseball Stadium Project and Public Infrastructure Work (as such terms are defined in the Construction Administration Agreement) and to approve the Construction Administration Agreement, for the reasons set forth above and as otherwise outlined in the accompanying memorandums, formal bidding being waived in this instance by a two-thirds (2/3) vote of the Board members present.

Section 3. This Board finds that it is in the best interest of Miami-Dade County to waive formal bid procedures in accordance with the provisions of Section 5.03(D) of the Home Rule Charter, Section 2-8.1 of the Code of Miami-Dade County, and the requirements of Administrative Order 3-38 in connection with the selection of the

Stadium Operator as the operator of the Stadium Premises and to approve the Operating Agreement and the operating and other rights and obligations conferred therein, for the reasons set forth above and as otherwise outlined in the accompanying memorandum, formal bidding being waived in this instance by a two-thirds (2/3) vote of the Board members present.

Section 4. This Board finds that it is in the best interest of Miami-Dade County to waive formal bid procedures in accordance with the provisions of Section 5.03(D) of the Home Rule Charter, Section 2-8.1 of the Code of Miami-Dade County, and the requirements of Administrative Order 3-38 in connection with the purchase by the County of building materials, supplies and equipment for the Baseball Stadium Project and the Public Infrastructure Work listed on Exhibit "J" to the Construction Administration Agreement, for the reasons set forth above and as otherwise outlined in the accompanying memorandum, formal bidding being waived in this instance by a two-thirds (2/3) vote of the Board members present.

Section 5. This Board finds that it is in the best interest of Miami-Dade County to waive formal bid procedures in accordance with the provisions of Section 5.03(D) of the Home Rule Charter, Section 2-8.1 of the Code of Miami-Dade County, and the requirements of Administrative Order 3-38 to authorize the Stadium Developer to contract with Hunt/Moss for the management of the construction of the Public Infrastructure Work, subject to the successful negotiation of the terms and conditions of the Construction Management Contract and the City Commission's approval of the Stadium Developer's retention of Hunt/Moss to manage the construction of the Public Infrastructure Work; and in the alternative, to authorize the County to contract with an appropriately licensed contractor for the management of the construction of the Public Infrastructure Work, for the reasons set forth above and as otherwise outlined in the

accompanying memorandum, formal bidding being waived in this instance by a two-thirds (2/3) vote of the membership of the Board.

Section 6. This Board hereby approves the conveyance to the Stadium Operator of the naming rights to the Stadium Premises in consideration of the terms and provisions of the Stadium Agreements, subject to the provisions of the Operating Agreement regarding such naming rights and subject to the prior fulfillment of the Conditions Precedent (as such term is defined below).

Section 7. This Board hereby approves the terms of the Stadium Agreements.

Section 8. The County Mayor or the County Mayor's designee shall have the following authority:

- (a) to execute such other documents and to take such action as may be necessary to execute and give effect to the intent of this resolution;
- (b) to expend monies identified in the Construction Administration Agreement and its exhibits, including contingencies specifically identified therein;
- (c) to exercise such delegated authority as is specifically identified in the Stadium Agreements ;
- (d) for the purposes specifically set forth in the Construction Administration Agreement, to expend funds from the following Dedicated Allowances, with the maximum limitations set forth below:

- (i) Four Million Three Hundred Thousand Dollars (\$4,300,000) for County soft costs, more particularly identified as third party reimbursable amounts for owner representative services, legal fees, and fees for construction administration, and

(ii) Five Million Dollars (\$5,000,000) for Owner's Contingency, to address scope changes and unforeseen conditions in Public Infrastructure Work and to satisfy Governmentally Caused Overruns caused by the County; and

(e) to award time extensions up to the maximums established in the operative documents, all subject to the terms, conditions and limitations set forth in the Stadium Agreements.

In addition, and notwithstanding any of the foregoing, the County Mayor or the County Mayor's designee shall be required to seek Board approval for any approvals, consents, actions, events or undertakings that would violate, alter, or ignore the substantive provisions of the Stadium Agreements, or that would create a financial obligation, cost or expense to the County that is greater than the delegated procurement authority of the County Mayor, as set forth in the County Charter, County Code, and any administrative or implementing orders.

Section 9. This Resolution shall become effective upon the occurrence of all of the following: (a) the approval by the City Commission of the City of Miami by four-fifths of the Commission's membership of a waiver of competitive bidding in accordance with Section 255.20, Florida Statutes, to authorize the Stadium Developer's retention of Hunt/Moss to manage the construction of the Public Infrastructure Work; (b) the proper execution by the City, the Stadium Developer, the Stadium Operator, and Florida Marlins, L.P., as the case may be, of such Stadium Agreements in substantially the form attached to this resolution; (c) the proper execution by a duly authorized representative of Double Play Company, the owner of Florida Marlins, L.P., of Exhibit M to the Construction Administration Agreement in the form attached to this resolution; and (d) approval by the Office of the County Attorney as to legal sufficiency of such executions (collectively, the "Conditions Precedent"). The Board hereby authorizes the County

Mayor or the County Mayor's designee to execute the Stadium Agreements on or after the effective date of this Resolution.

Section 10. This Board hereby waives the requirements of Resolution No. R-130-06 related to the requirement that the County Manager not place items on the Commission agenda seeking approval of a contract and authority to execute same until the underlying contract is completely negotiated, in final form and executed by all non-County parties.

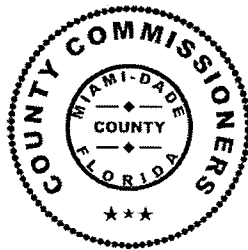
Section 11. This Board hereby directs the County Mayor to submit monthly reports to this Board regarding the Construction Manager's progress and compliance with the CSBE, SBE, CBE, CWP, Construction Outreach Program, and Outreach Program.

The Prime Sponsor of the foregoing resolution is Commissioner Bruno A. Barreiro and the Co-Sponsors are Vice-Chairman Jose "Pepe" Diaz and Chairman Dennis C. Moss. It was offered by Commissioner **Bruno A. Barreiro**, who moved its adoption. The motion was seconded by Commissioner Jose "Pepe" Diaz and upon being put to a vote, the vote was as follows:

	Dennis C. Moss, Chairman	aye	
	Jose "Pepe" Diaz, Vice-Chairman	aye	
Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	nay	Sally A. Heyman	nay
Barbara J. Jordan	aye	Joe A. Martinez	nay
Dorrian D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	nay	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 23rd day of March, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board, provided that by such date all of the conditions set forth in Section 9 above have been satisfied, and if not, by such later date as all of such conditions are satisfied. In no event, shall the conditions be satisfied later than June 1, 2009, or this resolution shall become null and void.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS



HARVEY RUVIN, CLERK

By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Geri Bonzon-Keenan